

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 369 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No.

UKABHAI DALABHAI PARMAR

Versus

STATE OF GUJARAT

Appearance:

MR MG NAGARKAR for Petitioner

MS KM VALIKARIMWALA, APP,for the Respondents.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 05/08/98

ORAL JUDGEMENT

The petitioner by way of this petition challenges the order of externment dated 9-1-98 passed by the Sub-Divisional Magistrate, Viramgam in Externment Case No. 10/97 under section 56 (b) of the Bombay Police Act and confirmed in appeal by the order dated 4-4-98 passed by the Deputy Secretary, Home Department of the State of

Gujarat, externing the petitioner from Ahmedabad City, Ahmedabad Rural, Surendranagar, Mehsana and Gandhinagar districts for two years.

Since this petition is required to be allowed on the ground that the Sub-Divisional Magistrate has passed the order of externment on extraneous grounds, the order is illegal and bad in law, it is not necessary for me to refer to and deal with the other contentions raised in this petition and to re-narrate the allegations made in the show cause notice dated 1-12-97 issued under section 59 of the Bombay Police Act. On composite reading of the notice, it is alleged that the petitioner is a head strong person against whom three criminal cases under the Indian Penal Code and the Atrocities Act have been registered. Besides the said cases, statements of about eight persons have been recorded who have made allagations against the petitioner. However, because of the fear of the petitioner they do not dare to file any complaint against the petitioner. With this material on record, the Sub-Divisional Magistrate has arrived at a satisfaction that the petitioner is a furious and head strong person and that it is in public interest as well as public order that the order of externment of the petitioner is required to be passed and hence he has passed the impugned order of externment.

The petitioner was called upon to remain present on 16-12-97 at 3.00 p.m. to meet with the allegations made in the show cause notice. However, the impugned externment order at Annexure "B" passed by the Sub-Divisional Magistraqte clearly reveals that on 16-12-97 the Sub-Divisional Magistrate had not only recorded the statement of the Sarpanch of village Kamijala but also obtained the affidavits of local people of the village making various allegations. Now this fact has not at all been stated in the show cause notice issued to the petitioner. Not only that but the copies of the statements and the affidavits of the local people have also not been supplied to the petitioner. In view of this factual position, it is abundantly clear that the impugned came to be passed on extraneous grounds and, therefore, the same has become illegal and is liable to be quashed and set aside.

In the result, this petition is allowed. The order of externment dated 9-1-98 passed by the Sub-Divisional Magistrate, Paten in Externment Case No.10/97 and as confirmed in appeal by the Deputy Secretary on 4-4-98 is quashed and set aside. Rule is made absolute accordingly with no order as to costs.

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